UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

No. 23-4110

September 19, 2025

LAURA A. GADDY, et al., Plaintiffs–Appellants,

v.

THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, Defendant–Appellee.

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE

CANDICE KULBETH, IN SUPPORT OF PETITION FOR REHEARING EN BANC

Candice Kulbeth
1158 E. 700 S.
Provo, UT 84606
(571) 274-9655
candice.kulbeth@gmail.com

/s/ *Candice Kulbeth*
Amicus Curiae, pro se

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), Candice Kulbeth respectfully moves for leave to file the attached amicus curiae brief in support of Plaintiffs–Appellants' petition for rehearing en banc.

INTEREST OF AMICUS CURIAE

Amicus is a scholar and citizen with a sustained interest in the application of preclusion doctrines that create "no-forum" situations in which litigants are denied due process and constitutional rights. She argues that, in First Amendment cases, a merits-before-doctrine approach preserves litigants' rights without sacrificing those of defendants.

REASONS FOR LEAVE

The proposed brief addresses the constitutional dangers posed by treating church autonomy as a categorical bar, an issue squarely implicated by the panel decision. Amicus brings perspective on how categorical doctrines function in practice to extinguish rights, with particular attention to recent cases in the Ninth, Tenth, and Fourth Circuits. This perspective may aid the Court in resolving the circuit split and in determining whether en banc rehearing is warranted. This argument bears directly upon whether this court should grant the Plaintiff's Petition for En Banc Rehearing

For these reasons, Amicus respectfully requests that the Court grant leave to file the attached Amicus Brief.

RULE 29(A)(4)(E) STATEMENT

Amicus authored the attached brief pro se, without assistance or advice of counsel. No party's counsel authored the brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief. No person other than Amicus contributed money intended to fund the preparation or submission of the brief.

PROOF OF SERVICE

I certify that on September 19, 2025, I caused the foregoing Motion for Leave and Amicus Curiae Brief to be filed with the Clerk of the Court through the CM/ECF system, which will serve all registered counsel of record.

Out of an abundance of caution, I further certify that I electronically mailed copies to:

- David Jordan (djordan@foley.com) and
- Wesley Harward (wharward@foley.com), counsel for Defendant-Appellee Corporation of the President of the Church of Jesus Christ of Latter-day Saints; and
- Kay Burningham (kay@kayburningham.com), counsel for Plaintiffs-Appellants Gaddy, Small, and Harris.

Dated: September 19, 2025

/s/ *Candice Kulbeth*

Candice Kulbeth, pro se
Provo, Utah County, Utah

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

No. 23-4110

September 19, 2025

LAURA A. GADDY; LYLE D. SMALL; LEANNE R. HARRIS, individually and on behalf of all others similarly situated,

Plaintiffs - Appellants,

v.

THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole,

Defendant - Appellee, and

DOES 1-50, Defendants.

BRIEF OF AMICUS CURIAE
CANDICE KULBETH
IN SUPPORT OF PLAINTIFF–APPELLANT'S PETITION FOR REHEARING EN BANC

Candice Kulbeth
1158 E. 700 S.
Provo, UT 84606
(571) 274-9655
candice.kulbeth@gmail.com

/s/ *Candice Kulbeth*
Amicus Curiae, pro se

INTEREST OF AMICUS CURIAE

I, Candice Kulbeth, submit this brief as *amicus curiae*. I have a scholarly and practical interest in the application of preclusion doctrines that result in "no-forum" situations where litigants are denied due process and constitutional rights. In particular, I argue that in First Amendment cases a merits-before-doctrine approach preserves litigants' rights without sacrificing those of defendants. This can be accomplished by translating religious claims into secular statutory standards for evaluation on the merits.

RULE 29(A)(4)(E) STATEMENT

I authored this brief *pro se*, without assistance or advice of counsel. No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money intended to fund the preparation or submission of this brief. No person other than myself contributed money intended to fund its preparation or submission.

TABLE OF CONTENTS

I. INTRODUCTION……...….1

II. THE CIRCUITS ARE SPLIT……..……. 1

III. CATEGORICAL DOCTRINES CREATE CONSTITUTIONAL BLACK HOLES. ….. 2

IV. A CASE FOR MERITS FIRST: *HUNTSMAN AND MARSH V. UTAH*…… ……4

A. Huntsman: Merits Translated to Secular Standards…… ……..4

B. Marsh v. Utah: Constitutional Rights Extinguished by Preclusion….5

C. *The Consequences of Divergence: A Doctrinal Fracture That Swallows Rights*……..6

V. *MARSH V. MARSH*: FRAUD RISK WHEN AUTONOMY IS INVERTED……...…6

VI. *GADDY* RISKS REPEATING THE *MARSH* ERROR… ……...10

VII. CONCLUSION……...…..11

TABLE OF AUTHORITIES

Field v. Mans, ……..……..8
516 U.S. 59, 70–71 (1995)

Gaddy, et al v. Corp. of the President of the Church of Jesus, et al …….…....2, 10
No. 23-4110 (10th Cir. 2025).

Huntsman v. Corp. of the Presiding Bishop of the Church ……...…… 1, 4
90 F.4th 1234 (9th Cir. 2024).

Marsh v. Marsh …….……..…6-12
No. 184701031 (Utah Dist. Ct. Nov. 27, 2019).

Marsh v. Utah……..……. 2, 3, 5, 9, 10, 11
No. 24-1964, 2024 (4th Cir. Dec. 9, 2024) (unpublished)

Midgley v. Rayrock Mines, Inc…….…… 8
374 F.3d 1039, 1047 (10th Cir. 2004)

Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 ……7

Restatement (Second) of Torts …….……8
§ 525 (Am. L. Inst. 1977)

The Family, A Proclamation to the World ……..……..7

CERTIFICATE OF COMPLIANCE

This document complies with the 2,600-word limit as set forth by Fed. R. App. P. 29(b)(4). This document contains 2,491 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f).

PROOF OF SERVICE

I certify that on September 19, 2025, I caused the foregoing Motion for Leave and Amicus Curiae Brief to be filed with the Clerk of the Court through the CM/ECF system, which will serve all registered counsel of record.

Out of an abundance of caution, I further certify that I electronically mailed copies to:

- David Jordan (djordan@foley.com) and
- Wesley Harward (wharward@foley.com), counsel for Defendant-Appellee Corporation of the President of the Church of Jesus Christ of Latter-day Saints; and
- Kay Burningham (kay@kayburningham.com), counsel for Plaintiffs-Appellants Gaddy, Small, and Harris.

Dated: September 19, 2025
Respectfully submitted,

/s/ Candice Kulbeth
Candice Kulbeth, pro se
Provo, Utah County, Utah

I. INTRODUCTION

When the First Amendment forces courts to walk a narrow path between two dangers - excessive entanglement in religious questions or excessive deference that allows religious authority to displace civil law - the autonomy debate often collapses into extremes. On one side, churches argue for categorical immunity. On the other, plaintiffs insist that fraud always vitiates autonomy.

Neither approach is stable. Absolute immunity creates constitutional black holes where rights vanish without remedy; unlimited fraud review risks entanglement. The principled solution is a merits-first rule: courts translate religious context into secular statutory terms and then decide claims on the merits. That preserves autonomy without extinguishing rights.

This case presents that choice squarely. By treating autonomy as a threshold bar, the panel extinguished claims before they could be heard. En banc rehearing is necessary not to decide who prevails, but to restore constitutional balance by ensuring that claims are resolved in a secular forum tethered to statute.

II. THE CIRCUITS ARE SPLIT

In *Huntsman v. Corporation of the Presiding Bishop*, the Ninth Circuit reached the merits of fraud claims against the Church.[1] This ruling is significant for

[1] *Huntsman v. Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints*, 90 F.4th 1234 (9th Cir. 2024).

two reasons: it examined whether billions in tithing reserves were handled "consistent" with doctrine and representations, and it treated autonomy not as a threshold bar but as a defense to be tested and rejected on the merits.

In contrast, the panel here in *Gaddy v. COP* held that autonomy foreclosed claims at the outset.[2] Allegations that the Church misrepresented its history and finances were never evaluated under statute; they were barred simply because adjudication might implicate religious context.

The Fourth Circuit in *Marsh v. Utah* took yet another path, upholding the district courts invocation of Rooker–Feldman to dismiss for lack of jurisdiction.[3] The plaintiff's allegation—that a Utah divorce court had displaced statutory standards with ecclesiastical testimony—was never reviewed in any federal forum.

These divergent outcomes—merits in the Ninth, autonomy bar in the Tenth, preclusion in the Fourth—leave litigants' rights to geography. That fracture is not hypothetical; it is active, destabilizing constitutional doctrine, and requires correction by this Court sitting en banc.

III. Categorical Doctrines Create Constitutional Black Holes

The autonomy doctrine, like preclusion and abstention, is meant to preserve judicial restraint. Properly applied, these doctrines limit courts from exceeding

---

[2] *Gaddy, et al v. Corp. of the President of the Church of Jesus, et al*, No. 23-4110 (10th Cir. 2025).

[3] *Marsh v. Utah*, No. 24-1964, 2024 (4th Cir. Dec. 9, 2024) (unpublished).

their jurisdiction or intruding into matters of religious belief. But when applied categorically, they function as doctrines of abdication. Instead of preserving constitutional boundaries, they extinguish rights altogether.

That danger is not theoretical. In *Marsh v. Utah*, the Fourth Circuit declined to hear constitutional claims by invoking Rooker–Feldman. The effect was to foreclose any merits review of a claim that a state court had adopted ecclesiastical testimony as binding law. Whatever the strength of the underlying claim, the federal court's use of a jurisdictional bar meant the rights asserted were never even tested. The result was not judicial restraint but judicial silence.

The same danger is present here. The panel decision in *Gaddy* treated autonomy as an absolute bar to fraud claims, regardless of whether they alleged secular misrepresentations about history or finances. By doing so, the panel did not simply avoid entanglement—it prevented any adjudication. The claims were extinguished, not answered.

This pattern—rights vanishing into procedural black holes—undermines both Free Exercise and Due Process. It creates the anomaly that a citizen may have a substantive constitutional right but no forum in which to assert it. The First Amendment does not permit such an outcome. Restraint cannot mean abdication, and abstention cannot mean annihilation.

The solution is not to discard autonomy or preclusion altogether, but to cabin them. A merits-first principle ensures that claims are translated into secularly cognizable terms and tested against statute. Where a claim cannot be translated without entanglement, dismissal may follow. But where it can, autonomy should not be a categorical shield. Only this approach preserves both religious liberty and the constitutional right to a forum.

IV. A CASE FOR MERITS FIRST: *HUNTSMAN AND MARSH V. UTAH*

A. Huntsman: Merits Translated to Secular Standards

In *Huntsman,* the Ninth Circuit reviewed allegations that the Church misrepresented the use of billions of dollars in tithing funds. The plaintiffs claimed they were induced to donate based on assurances of how their contributions would be spent.

The court did not dismiss those claims on autonomy grounds. Instead, it reached the merits. It examined whether the Church's handling of funds was "consistent" with its doctrine and public representations. By engaging in that inquiry, the Ninth Circuit signaled that autonomy is not a categorical bar to fraud claims.

The Ninth Circuit's approach is significant for two reasons. First, it demonstrates that secular claims can be adjudicated without entangling courts in

theology. The panel did not attempt to define the truth of religious belief, but to measure conduct against representations made. Second, it shows that autonomy can operate as a defense evaluated on the merits rather than as a threshold barrier that forecloses adjudication altogether.

This Court is now confronted with the same structural question. Unlike the Ninth Circuit, the panel here treated autonomy as an absolute bar. That divergence, over the same defendant and substantially parallel claims of misrepresentation, creates an undeniable circuit split. The question is not whether the Church should prevail on the merits. It is whether plaintiffs alleging secular fraud are entitled to have their claims tested on the merits in the first place.

B. Marsh v. Utah: Constitutional Rights Extinguished by Preclusion

A third approach appears in *Marsh v. Utah*. There, a litigant alleged that a Utah divorce judgment had unconstitutionally relied on ecclesiastical testimony from a senior Church officer. He sought federal review on the ground that the trial court had effectively displaced statutory standards with religious definitions, violating constitutional rights.

The Fourth Circuit did not reach the merits. Instead, it invoked the Rooker–Feldman doctrine and dismissed for lack of jurisdiction. The result was that the plaintiff's constitutional claims were never heard in any federal forum. Whatever the strength of those claims, they were extinguished by a procedural bar.

C. The Consequence of Divergence: A Doctrinal Fracture That Swallows Rights

The split is not simply academic. When courts apply autonomy, preclusion, or abstention as categorical bars, the result is that substantive rights vanish without ever being tested. The same institution, facing substantially similar allegations, has been subject to merits review in one circuit, categorical dismissal in another, and jurisdictional foreclosure in a third. This inconsistency destabilizes the law and undermines confidence in the courts.

The problem is not merely divergent outcomes but a deeper constitutional flaw: doctrines designed to preserve judicial restraint are being misapplied as doctrines of abdication. The result is a set of constitutional black holes where claims are extinguished without remedy. That danger is vividly illustrated in Utah itself, where ecclesiastical testimony displaced statutory law in a civil proceeding and later insulated itself from federal review. It is to that example this brief now turns.

V. *MARSH V. MARSH*: FRAUD RISK WHEN AUTONOMY IS INVERTED

The danger of categorical bars is best illustrated in Utah. In *Marsh v. Marsh,* a divorce proceeding, the trial court permitted Presiding Bishop W. Christopher Waddell of the Church of Jesus Christ of Latter-day Saints to testify not only about ecclesiastical definitions of "fatherhood" and "worthiness," but also about custody,

dissipation of assets, and financial responsibility.[4] The court then adopted those ecclesiastical pronouncements as if they were statutory fact findings.

As a member of the Presiding Bishopric, Waddell controls the Church's finances and sits on the board of Ensign Peak Advisors, which later admitted to filing fraudulent SEC reports.[5] He referenced his ecclesiastical position, background in finance, and prior general authority talks to bolster his credibility, condemning Marsh and influencing the division of marital property and parental rights.

Waddell's testimony directly shaped the court's orders. He argued that Marsh's criminal conviction made him an unfit father, leading the judge to condition parent-time on a reunification therapist despite finding that Marsh was "an involved father who was affectionate to the children and had a strong bond with them," and that the children's anxiety stemmed from their mother. Though appearing as a character witness, Waddell's statements on "dissipation" of assets were accepted as fact and used to award the estate entirely to his daughter. He further invoked the Church's *Proclamation on The Family*[6] to assert shared "faith's

---

[4] *Marsh v. Marsh*, No. 184701031 (Utah Dist. Ct. Nov. 27, 2019).

[5] *See* Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order, *In re* Ensign Peak Advisors, Inc. & The Church of Jesus Christ of Latter-day Saints, Exchange Act Release No. 96951**,** Admin. Proc. File No. 3-21306 **(**Feb. 21, 2023**).**

[6] The Church of Jesus Christ of Latter-day Saints, *The Family: A Proclamation to the World* (Sept. 23, 1995), https://www.churchofjesuschrist.org/study/scriptures/the-family-a-proclamation-to-the-world.

beliefs" with the court and testified that Marsh's parents must accept responsibility for his actions.[7] The court adopted this line as well, converting what had been a voluntary monthly gift from Marsh's father into a compulsory support obligation:

> "Now under the low-income calculation, the respondent would pay only $30 per month in child support. Given the facts of the case, the reason for the respondent's lack of earnings, his own fault, his own criminal conduct, the needs of the minor children for support, The Court finds that it is justified in deviating from the guidelines in ordering [Marsh] to pay petitioner child support in the amount of $700 per month…. It would be inequitable to the parties' children to order $30 per month in support when their father is in prison because he committed a criminal act."[8]

As the law defines it, Waddell's testimony constituted fraudulent misrepresentation.[9] First, Waddell misrepresented his own beliefs under the color of ecclesiastical authority; he condemned Marsh for the very kind of misconduct under scrutiny in his own office. Second, he reinterpreted doctrine to secure a civil outcome—declaring Marsh ineligible for forgiveness because he was "in federal prison for federal crimes" and unfit as a father because he failed to meet the

---

[7] Informal Brief for Appellant at 18-22, *Marsh v. State of Utah*, No. 24-1964 (4th Cir. Oct. 10, 2024), ECF No. 4.

[8] *Id*. at 6.

[9] *See Restatement (Second) of Torts* § 525 (Am. L. Inst. 1977) (defining fraudulent misrepresentation as a false representation made with knowledge or without sufficient basis, intended to induce another to act, and resulting in justifiable reliance to the recipient's detriment); *Field v. Mans*, 516 U.S. 59, 70–71 (1995) (recognizing common-law fraud elements of misrepresentation, scienter, intent, reliance, and damages); *Midgley v. Rayrock Mines, Inc.*, 374 F.3d 1039, 1047 (10th Cir. 2004) (citing § 525 and applying its elements).

Proclamation's standards.[10] These were not neutral facts but doctrinal redefinitions, presented as ecclesiastical authority and accepted as dispositive evidence.

Thus, the court relied on religious office and testimony as though they supplied statutory standards. Autonomy is meant to keep civil courts out of theology. Here, it was inverted—ecclesiastical answers displaced civil law. The orders entrapped Marsh and his parents: Marsh was awarded no assets, yet obligated to pay support while incarcerated, and his parents, compelled to shoulder expenses, lacked standing to appeal.

When Marsh later sought federal review, the district court dismissed under Rooker–Feldman in *Marsh v. Utah*;[11] dismissal was affirmed upon appeal.[12] The fraud was insulated twice: first by adoption at the state level, and then by a categorical bar at the federal level. A citizen alleging that religious office supplanted statute was denied any merits hearing. This sequence demonstrates why a merits-first principle is essential. Only by confining ecclesiastical testimony to character witness limits and translating it into statutory terms can courts preserve due process and prevent autonomy from being inverted into fraud.

---

10 *Marsh* Informal Br. at 18.

11 *Marsh v. Utah*, No. 1:24-cv-516, slip op. at 1 (E.D. Va. Sept. 13, 2024).

12 *Marsh v. Utah*, No. 24-1964 (4th Cir. Dec. 9, 2024) (unpublished).

VI. *GADDY* RISKS REPEATING THE *MARSH* ERROR

The fraud and constitutional distortion evident in *Marsh v. Marsh* are not isolated. They are the natural consequence of treating church autonomy as a categorical bar. That is precisely the error the panel committed in this case.

Just as Waddell's testimony induced a Utah court to adopt ecclesiastical authority as civil law, the panel here extinguished Gaddy's claims without translating them into secular statutory terms. In both instances, autonomy was inverted: instead of shielding courts from entanglement, it was used to insulate ecclesiastical authority from accountability.

The danger for this Court is evident. If autonomy continues to be applied as a threshold bar, the Tenth Circuit will replicate the *Marsh* sequence—claims rooted in secular fraud will be dismissed without hearing, religious authority will remain untested, and any attempt at federal review will collapse into preclusion doctrine. Citizens alleging that ecclesiastical office has supplanted statute will once again find themselves without remedy.

The lesson of *Marsh v. Marsh* is that fraud occurs when ecclesiastical testimony is accepted as dispositive. The lesson of *Marsh v. Utah* is that categorical doctrines prevent correction. The lesson for this Court is clear: only a merits-first rule can prevent the Tenth Circuit from entrenching the very constitutional black holes that have already harmed litigants in Utah. That is why

en banc review is not discretionary, but a constitutional duty to preserve both judicial integrity and litigants' rights.

VII. CONCLUSION

This case presents more than a dispute over the boundaries of fraud and faith. It presents a test of whether the Constitution permits substantive rights to vanish into doctrinal black holes. The Ninth Circuit has held that such claims proceed to the merits. The Fourth Circuit has extinguished them through preclusion. The panel here adopted a categorical autonomy bar. The result is an untenable fracture in constitutional law, where access to a forum depends not on the nature of the right but on the happenstance of geography.

The lessons of *Marsh v. Marsh* and *Marsh v. Utah* are clear. Fraud occurs when ecclesiastical testimony is adopted as civil command. Remedy disappears when categorical doctrines prevent correction. Together, they demonstrate that autonomy inverted is autonomy abused.

This Court now faces a choice: whether to entrench the panel's categorical bar or to restore constitutional balance through en banc review. The path of restraint is not abdication, but translation—ensuring that claims are stated in secular, statutory terms and then resolved on the merits. That principle honors both church autonomy and due process.

For the sake of judicial integrity, constitutional consistency, and the rights of citizens entitled to a forum, the Court should grant rehearing en banc.